

**STATE OF UTAH**  
**STATEWIDE CONTRACT AR1465**

1. **CONTRACTING PARTIES:** This Statewide Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

Kentrox LLC (formerly ADC)  
Name

20010 NW Tanasbourne Drive  
Address

Hillsboro, Oregon 97124  
City State Zip

Federal Tax ID# 95-4876931 Vendor # 94825A Commodity Codes: 20464, 20621, 20623

Vendor Contact Person: Customer Service Vendor Phone #: 800-733-5511 Option 4

Vendor Fax #: 503-350-6110 Vendor email address: customer\_service@kentrox.com

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this Contract is to provide:  
Data Communications Equipment and Associated OEM Maintenance & Training.
3. **CONTRACT PERIOD:** Effective date June 24, 2002 Termination date May 31, 2004 unless terminated early or extended in accordance with the terms and conditions of this contract.  
Renewal option: Renewable for one or two year terms up to four additional years.
4. **PRICING AS PER ATTACHMENT A (Addendum 1)**  
PAYMENT TERMS: Net 30 days  
DAYS REQUIRED FOR DELIVERY: stock to 4 weeks ARO  
MINIMUM ORDER: none  
FREIGHT TERMS: F.O.B. Destination, Freight Prepaid
5. **ATTACHMENT A:** Addendum 1  
**ATTACHMENT B:** WSCA Standard Terms and Conditions  
**ATTACHMENT C:** N/A  
**Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.**
6. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**  
a. All other governmental laws, and regulations applicable to the goods and/or services authorized by this contract.  
b. Utah State Procurement Code, Procurement Rules, RFP LW1907, and CONTRACTOR'S proposal response to RFP LW1907 dated 07-17-01.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

Signature on file  
Contractor's signature

Signature on file  
Douglas G. Richins  
Director, Division of Purchasing

\_\_\_\_\_  
Type or Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **ATTACHMENT A ADDENDUM 1**

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and Kentrox LLC (formerly ADC), referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training**.

### **A. Manufacturer Product Line(s)**

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: N/A

Switches: N/A

LAN/WAN Wireless: N/A

CSU/DSU: Kentrox (formerly ADC)\*

\*Note: Kentrox, LLC acquired ADC. All references to ADC in the Response to the bid are now identified as Kentrox, LLC.

### **B. State of Utah/WSCA Contract Manager**

Debbie Gundersen  
State of Utah  
Division of Purchasing and General Services  
State Office Building, Capitol Hill  
Room 3150  
Salt Lake City, UT 84114-1061

email: dgundersen@utah.gov  
Voice: (801) 538-3150  
Fax: (801) 538-3882

### **C. Remittance Address**

Kentrox LLC  
20010 NW Tanasbourne Drive  
Hillsboro, Oregon 97124

### **D. Special Terms and Conditions**

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence

The order of precedence for the contract terms will be as follows:

1. Addendum 1
2. WSCA Terms and Conditions
3. Contractor's Proposal Response to RFP LW1907
4. RFP LW1907

2. Included Documents

The documents listed in Number 1 are included in the contract. It is agreed that any reference to the “Entire Agreement” includes these documents.

3. Public Information

The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.

4. Arbitration

The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor’s Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.

5. Contract Period

The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.

6. Governing Law

This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity’s State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity’s State.

7. Revisions to the WSCA Standard Terms and Conditions

The WSCA Standard Terms and Conditions will be revised as follows:

A. There are no changes to the WSCA Standard Terms and Conditions.

**Any additional changes listed by the Contractor in the Response to the RFP will be null and void.**

8. Revisions to Contractor’s Response to the RFP

Note: The changes below may be listed in multiple locations throughout the response. The changes will apply to all instances of similar terms.

The Contractor’s Response to the RFP will be revised as follows:

A. In the KENTROX Support Agreement (submitted as ADC Support Agreement), the GENERAL Clause (located on Page 34 and may be identified in other sections of the Response to the RFP), will be revised as follows:

Delete the first sentence which reads: “ADC [now KENTROX] DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED WITH REGARD TO THE PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE ARISING OUT OF OR IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT.”

B. Page 35, in the Contractor's Response to the RFP, the KENTROX Support Agreement, General Clause, second paragraph, second sentence is revised as follows:

Any terms and conditions in any purchase order or other instrument issued by Customer in connection with this Agreement which are in addition to or are inconsistent with the terms and conditions of this Agreement shall not become a part of this Agreement and shall not be binding on **KENTROX**, *unless added to the contract in writing and approved by both parties.*

C. Any inconsistencies between the Contractor's Response to the contract and other terms in the contract will be resolved by the order of precedence listed in Attachment A, D.1. The governing laws and the entire agreement clause will be governed by Attachment A, D.6. and D.2. respectively.

9. State of Utah Only Requirement

Attachment C from the RFP will apply to the State of Utah only. This term is as follows:

**E-PROCUREMENT:** The State of Utah has awarded an e-procurement system contract that has a transaction fee of 1% per order with a ceiling of \$500 for any one order of products/services. There are expected cost savings to the Contractors with implementation of the system. The successful vendor must agree to terms as described in the following subparagraphs:

a. The Contractor must agree to integrate its catalog of products/services into the e-procurement system. Once implemented, the Contractor must pay the transaction fees for orders placed against the contract. In the event, the Contractor fails to make payments, the State may: (i) eliminate the Contractor from the system in accordance with an escalation and review process developed by the State and its e-procurement vendor and (ii) terminate the State contract and award the contract to the next acceptable bidder.

b. At the time that the Contractor will be required to offer products/services through the e-procurement system, the State will negotiate an equitable adjustment in unit prices to account for the expected supplier fees on orders placed on the system. The State will negotiate a single pricing structure for contract purchases and (i) prohibit discounting off-system purchases or otherwise offering discriminatory pricing or preferences for orders placed off-system; and (ii) require the Contractor to manually track and report the ordering volume of off-system purchases of supplies/services.

**E. Contractor Requirements**

1. Contractor Responsibility

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors.

2. Serving Subcontractors

If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

3. WSCA Administration Fee

The contractor must pay a WSCA administration fee of one tenth of one percent (.10%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.

4. Usage Reporting Requirement  
Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.
5. Change in Contractor Representatives  
The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.
6. Website Development and Maintenance  
Contractor must maintain said website and keep the information current and correct on a timely basis.
7. Rollout and Marketing  
Contractor may conduct a marketing effort as described in Contractor's proposal.
8. Right to Publish  
Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.
9. Contractor's Scope of Equipment and Services  
Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.
10. E-Rate Requirement  
Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.
11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid  
Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period

Percentage discount depth from list is not subject to a “price increase request” that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are guaranteed for two years.

13. Product Revision Requests

Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied

Manufacturer’s price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

**F. Contract Scope of Equipment and Related Services**

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

**1. Discounts of Manufacturers Price List**

**a. Pricing Discounts**

<b>Kentrox Product Category</b>	<b>GSA Discount off List Prices</b>
1010 PA ISDN NTU	30%
AAC-2	20%
AAC-3	20%
Accessories	15%
CellSMART 200	20%
CrossPATH II	30%
CrossPATH II AC	30%
D-SERV II	30%
D-SERV P/I	30%
D-SERV S/A	30%
DataSMART	30%
IDSU	30%
M-PATH	30%
Satellite 651 DSU	30%
Satellite 931 CSU	30%
ServicePoint	30%
Software	30%
T-SERV II P/I	30%
T-SERV II S/A	30%

T-SMART P/I	30%
T-SMART S/A	30%

**b. Discount Structures Based on Volume (per order or progressive cumulative volume)**  
(no volume discounts)

**c. WSCA Member-State coverage**  
(All WSCA Members are covered):

Alaska  
California  
Colorado  
Hawaii  
Idaho  
Minnesota  
Nevada  
New Mexico  
Oregon  
Utah  
Washington

**2. Resolution of Customer Problems (Found below Section IV 4.4.3.5)**

**PROBLEM RESOLUTION – PROJECTED TIMEFRAME**

**Severity 1 -** A “Network Emergency”, meaning the failure of a previously functioning Kentrox product, rendering the product or system inoperable. Further defined as any problem causing service unavailability or severe degradation. ***Resolution time – within 24 hours after an Kentrox technician arrives on site.***

**Severity 2 -** Problem results in some loss of functionality and/or some degradation of performance. However, the system is operable. ***Resolution time – within 72 hours after an Kentrox technician arrives on site.***

**Severity 3 -** Problem results in degraded performance, not deemed significant to the end user or the service provider. System availability is not affected. ***Resolution time – within 30 days after we receive your call.***

**3. Escalation Procedures (Found in Section IV Technical Specifications 4.1.3.13)**

Names and contact numbers would be determined by the product and level of maintenance. For Priority One Issues: Dependant on which products, you will call the following 800# number (1-800-733-5511) and be engaged with a technical support representative. If a problem is not resolved within 2 hours, then the technical support Supervisor is notified. Within 4 hours a TAC manager is notified. Within 8 hours a development engineering is notified.

**4. Technical Services (Equipment Warranty, Installation, Training, Maintenance Options, Replacement Parts)**

## **EQUIPMENT WARRANTY (Found in Section IV 4.1.3)**

### **4.1.3 Guarantees**

#### **Warranty**

- 4.1.3.1 The offeror must guarantee that all equipment delivered pursuant to these specifications will be new and unused, will conform to said specifications, and will be free from mechanical, electrical or other defects for a minimum of two (2) years from the date of installation, but no more than twenty eight (28) months from the date of shipment.
- 4.1.3.2 If because of workmanship or design defects the equipment supplied requires modifications, repair or replacement, the offeror must promptly perform the necessary work to insure the equipment is in satisfactory operating condition at no cost to the buyer.
- 4.1.3.3 Both the offeror and buyer agree that the buyer has the right to perform any routine maintenance and/or repairs required within the warranty period without jeopardizing the offeror's warranty or guarantee.
- 4.1.3.4 The offeror agrees to replace or repair any defective parts during the warranty period. The buyer may agree to replace these parts or choose to have repairs and modifications done by the offeror or their local service representatives.
- 4.1.3.5 Any offeror unable to provide local service must clarify how they intend to provide satisfactory service support comparable to a local service center.

**(Product specific warranty periods below are not listed in contract, but are provided here for convenience):**

#### **Covered Products**

#### **Warranty Period**

##### **Hardware:**

##### **CSU Products:**

CrossPATH	Five (5) years
E-SMART	Five (5) years
M-PATH	Five (5) years
Satellite 9xx	Five (5) years
T-SERV	Five (5) years
T-SMART	Five (5) years

##### **DSU Products:**

CrossPATH	Five (5) years
D-SERV	Five (5) years
DataSMART	Five (5) years
Satellite 6xx	Five (5) years

##### **SDU Products:**

ServicePoint	Five (5) years
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**System Products:**

AAC	Two (2) years
CellSMART	Two (2) years

**Non-Kentrox Hardware:**

Supplier's Warranty Period

**Software:**

Kentrox Software	Ninety (90) days
Non-Kentrox Software	Supplier's Warranty Period

**TELEPHONE SUPPORT (Found below Section IV 4.4.3.5)**

Telephone assistance is available from our Technical Assistance Center twenty-four (24) hours/day, seven (7) days/week at no charge during normal business hours, defined as, 7:00AM – 5:00PM, Central Time, Monday – Friday, excluding Holidays. Telephone assistance provided outside normal business hours will be charged at the rate of \$200 USD per hour. An Kentrox qualified support technician will be available within one (1) hour from the time we log your call.

**ON-SITE SUPPORT (Found below Section IV 4.4.3.5)**

If requested, on-site support by an Kentrox technician may be provided on an **as available** basis. Such on-site support will be billed at the Kentrox published hourly rate in effect at that time, plus associated travel costs and expenses.

**HARDWARE ADVANCE REPLACEMENT (Found below Section IV 4.4.3.5)**

After verification of failure by an approved support technician, replacement part(s) may be expedited from our nearest repair parts depot and will be on-site within one (1) business day, provided the request is received by Kentrox' Technical Assistance Center prior to 1:00PM, Central Time. Kentrox' standard policy and pricing for Advanced Replacement applies.

**HARDWARE REPAIR (Found below Section IV 4.4.3.5)**

Defective product must be returned to Kentrox for repair. In-warranty repair is provided at no cost, per standard warranty policy terms & conditions. Out-of-warranty repairs will be provided at Kentrox' standard factory repair rates in effect at the time the factory receives the defective product.

**SOFTWARE MAINTENANCE (Found below Section IV 4.4.3.5)**

Kentrox will provide a Software Subscription Service ("bug fixes") during the term of warranty. The customer assumes responsibility for installation of all such "fixes". New "features" are priced separately.

**TRAINING (Found below Section IV 4.4.3.5)**

Your maintenance support staff must attend Kentrox approved training courses in order to maintain a technically proficient staff capable of providing direct system support and to interface with Kentrox. Appropriate training packages are available at Kentrox' standard course rates in effect at the time of request.

**(Found below Section IV 4.4.3.9):**

For **URGENT CARE** customers these training packages are available at Kentrox' standard course rates, **less 50%**.

## **REPLACEMENT PARTS (Found below Section IV 4.1.3.6)**

Kentrox's will guarantee that standard replacement units will be available for a minimum of five (5) years from the date of shipment or the original equipment. See section below (4.1.3.7) for Kentrox's standard Repair and Return Policy.

## **INSTALLATION (Found below Section III D 4(a) within Support Agreement)**

### **Software Maintenance.**

Kentrox will provide all software releases and bug fixes. The customer assumes responsibility for installation of all such releases and fixes. New features are priced separately.

### **Installation Service Includes:**

- Installation during Standard hours 8:00 a.m. and 5:00 p.m. local time, Monday - Friday, excluding Holidays. After hours installation is available for an additional 50%.
- Unpacking of equipment.
- Interfacing of equipment.
- Inserting the equipment in a rack, shelf, wall mounted or floor set, if ordered.
- Connecting to the appropriate telephone lines at the Telco demarcation point, limit ten (10) feet.
- Attaching the appropriate cables.
- Running recommended equipment diagnostics.
- Correction of malfunctions while running diagnostics.
- Completing a check of installed equipment in the operating environment.
- Alerting customer of circuit problems which may delay completion of the installation.
- Equipment familiarization for customer's operator, not to exceed one (1) hour.

### **Installation Service Does Not Include:**

- Electrical work external to equipment.
- Systems engineering services, programming, and operations procedures of any sort.
- Special access arrangements to and from data center.
- Movement of equipment to final installation footprint.
- Special end-to-end testing not defined in recommended installation testing, such as CPE to CPE equipment testing.
- Central site software configuration support when only a remote unit is installed.
- Correcting a faulty customer performed installation.
- Inside wiring, other than to an ADC Telecommunications approved Telco demarcation point.
- Obtaining special permits, authorization, etc.
- Additional trip(s) to site to perform cutover of network managed products.

### **Customer Responsibility:**

- Site ready i.e., Telco and power.
- Equipment is available.
- Adequate foundations/mounting board.
- Proper climactic and environmental conditions.

- Supply such further facilities as may be required for installation and use in accordance with ADC Telecommunications' instructions.
- Scheduling the installation 10 working days prior to requested schedule date,
- Unstaged/configured products will have the required and appropriate documentation, software, and configuration documentation available either on site or prior to the beginning of the physical installation.
- Installations of UPS's which require the hard wiring of the equipment into the electrical system of the building is outside of the installation contract.
- Any ADC Telecommunications remote test time on site in excess of 30 minutes after notifying the customer will be billed at Time and Materials rates.
- Upon arrival at the site, the ADC installation technician must be provided with completed worksheets from the appropriate ADC Telecommunications, Inc. "Planning Guide". The "Planning Guide" is available on the ADC Telecommunications, Inc. web site [www.kentrox.com](http://www.kentrox.com). From the Home Page, select "Library", select "User Manuals", select the product family, select "Planning Guide" (if no Planning Guide is available, select "Installation Guide").

Note 1: If a Field Engineer is dispatched for an installation and the customer is not ready, the service call will be billed at Time and Materials rates including a 4 hour minimum.

Note 2: Additional testing beyond the scope of the standard testing described above will be billed at current Time and Material rates. Special circuit and/or application testing can be handled via an acceptance test plan provided by the customer with the test charged at Time and Material rates.

ADC Telecommunications Maintenance Agreement Terms and Conditions will be incorporated into and form a part of any purchase order resulting from this quotation.

**SUPPORT OPTIONS (Summary of the Support Options which are found in expanded form below Section IV 4.4.3.9)**

Kentrox' flexible approach to providing service options allows our customers to choose the appropriate level of support a given environment. Our goal is to offer responsive, efficient, cost-effective *world-class service and support*.

<b>SERVICES</b>	<b>CRITICAL CARE Features</b>	<b>URGENT CARE Features</b>	<b>SHARED SUPPORT Features</b>	<b>STANDARD WARRANTY Features</b>
<b>Phone Support</b> <ul style="list-style-type: none"> <li>Hours of Coverage</li> <li>Response Time</li> <li>Remote Diagnostics</li> <li>Rate</li> </ul>	24X7 <30 minutes Yes No Charge	24X7 <1 hour Yes No Charge	24X7 <1 hour Yes No Charge	24x7 As available No Std. Hourly Rates
<b>Problem Resolution Time</b> <ul style="list-style-type: none"> <li>Severity 1</li> <li>Severity 2</li> <li>Severity 3</li> </ul>	24 Hours 72 Hours 30 Days	24 Hours 72 Hours 30 Days	24 Hours 72 Hours 30 Days	24 Hours 72 Hours 30 Days
<b>Factory Repair Services</b> <ul style="list-style-type: none"> <li>Repair Turn Time</li> <li>H/W Repair Cost</li> <li>Advance Replacement Response time</li> </ul>	15 Business Days No Charge  <4 Hours	15 Business Days No Charge  1 Business Day	15 Business Days No Charge  1 Business Day	15 Business Days No Charge  Std. Policy and Rates
<b>Software Maintenance</b> <ul style="list-style-type: none"> <li>Software Updates</li> </ul>	All releases (Kentrox Installed)	All releases (Kentrox Installed)	All releases (Customer Installed)	Subscription Service (Customer Installed)
<b>On-Site Support</b> <ul style="list-style-type: none"> <li>Response Time</li> <li>Rate</li> </ul>	<4 hours No charge	<24 hours No charge	As available Std. Hourly Rates	As available Std. Hourly Rates
<b>Web Access</b> <ul style="list-style-type: none"> <li>Doc Updates, Tech Bulletin S/W Updates, Tech Supp.</li> </ul>	Yes	Yes	Yes	Yes
<b>Standard Product Training</b> <ul style="list-style-type: none"> <li>Required</li> <li>Price</li> </ul>	No 50% discount	No 50% discount	Yes 50% discount	No Standard Rates

**For additional information or clarification, including the identification of prerequisites, please contact the office of Global Services 1 800 733-5511 X6430**

## **REPAIRS (Found below Section IV 4.1.3.7)**

### **I. IN WARRANTY**

Repaired – No Charge. (ADC provides an analysis document upon request. ADC will provide a written explanation of the analysis activities undertaken with the returned product upon request. If unable to duplicate customer problem options include a site visit with the unit in question and /or replacement of unit at ADC's discretion.)

ADC assumes no warranty liability with respect to unauthorized modifications, repairs, tampering, or the negligent or improper use of product. ADC's warranty is not transferable to third party repair facilities. OEM equipment purchased by ADC and resold will be limited to that manufacturer's warranty.

### **II. OUT OF WARRANTY**

Repair Charge is 45% of current customer price ( **Units with a list price equal to or over \$5,000.00, the repair charge will be based on Time, Labor & Material )**  
( ADC/Kentrox charges a % from list price)

ADC will provide a written explanation of the analysis process undertake with the returned product upon request. If a "No Trouble Found" (NTF) analysis is determined to be related to ADC's mis-diagnosis or testing for the wrong application, all previous charges will be credited.

### **III. ADVANCE REPLACEMENT OPTION (Excluding AVS & ITS Corporation)**

Units are shipped overnight and invoiced at 100% of current customer price. **A customer Purchase Order number is required to ship Advance Replacement unit(s).** When defective unit(s) are received at ADC, credit will be issued under the following conditions:

**In Warranty – 80% credit**

**Out of Warranty – 0% credit**

**ADC charges are based on an amount from list price.** The defective unit(s) must be returned within (30) days from the shipment date of the advance replacement unit(s) to be eligible for credit.

### **IV. LOANER PROGRAM ( AVS & ITS Corporation only)**

Customers are encouraged to purchase the proper quantity of spare modules for their system to ensure uninterrupted service in the event of a failure. In those instances where failed components create an out-of-service condition (**an out-of-service condition exists where broadband channels cannot be transmitted or received at a location**), ADC will make its best effort to provide a replacement product.

Units are shipped overnight on a LOAN ONLY basis and will be invoiced at 100% of the customer current price when shipped (A Purchase Order is required).

Defective units must be returned to ADC within (30) calendar days of the shipment date or loaned units. Loaned units must be returned to ADC within (30) days of shipment of customers repaired unit to customer in order to be eligible for credit. After the repaired unit is returned back to the customer and the loaned unit is received at BCD, 100% credit, less a non-refundable service fee of \$250 for each unit credited less repair charges.

**V. GENERAL**

**Warranty for Repaired Product**

ADC will warrant repairs for a period of 90 days from the returned shipment date or until the original warranty expires, whichever is longer.

**Freight Responsibilities For Return Of Product For Repair**

The customer pays the freight to return units to the ADC Division where they were manufactured.

**Return Authorization Procedure**

Product returns must be authorized with an RMA (Return Material Authorization) number by the ADC Product Return Department and must be received at ADC within 30 calendar days. If product is not received within 30 calendar days, the RMA becomes invalid and canceled. A new RMA number must be requested.

**To receive a RMA for a product please call the following toll free 800# and ask for the Product Return Department.**

**Repair & Returns Group      800-366-3891 or 612-946-3000**

## **ATTACHMENT B**

### **Standard Contract Terms and Conditions**

#### **Western States Contracting Alliance (WSCA)**

**1. PARTICIPANTS:** Western States Contracting Alliance (“WSCA”) is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be permissive.

#### **2. DEFINITIONS:**

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation for bid, request for proposal, or otherwise. “Bidder” or “Offeror” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive price agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

**3. QUANTITY ESTIMATES:** Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

**4. SPECIFICATIONS:** Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

**5. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS:** The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

**6. SAMPLES:** Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

**7. CASH DISCOUNT TERMS:** Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**8. TAXES:** Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

**9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS:** Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

**10. PATENTS, COPYRIGHTS, ETC:** The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

**11. AWARD:** Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.



**12. NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

**13. TERMINATION:** Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.”

**14. DEFAULT AND REMEDIES:**

A. Any of the following shall constitute cause to declare the contract or any order under this contract in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this contract.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
- (3) Impose liquidated damages, as specified in the solicitation or contract;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

**15. LAWS AND REGULATIONS:** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**16. CONFLICT OF TERMS:** In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

**17. REPORTS:** The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

**18. HOLD HARMLESS:** The contractor shall release, defend, indemnify and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

**19. ORDER NUMBERS:** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. GOVERNING LAW AND VENUE:** This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

**21. DELIVERY:** The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**22. WARRANTY:** As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the PURCHASING ENTITY under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the PURCHASING ENTITY apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the PURCHASING ENTITY has relied on the CONTRACTOR'S skill or judgment to consider when it advised the PURCHASING ENTITY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of

significant defects or unusual problems about which the PURCHASING ENTITY has not been warned. Remedies available to the PURCHASING ENTITY include the following: the CONTRACTOR will repair or replace (at no charge to the purchasing entity) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the PURCHASING ENTITY may otherwise have under this contract with respect to defects.

**23. AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.

**24. ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.

**25. NONDISCRIMINATION:** The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

**26. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**27. INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

**28. PAYMENT:** Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45

days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".

**29. FORCE MAJEURE:** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**30. HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**31. FIRM PRICE:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the contract.

**32. EXTENSION OF PRICES:** In the case of error in the extension of prices in the proposal, the unit prices will govern.

**33. PROPOSAL PREPARATION COSTS:** WSCA is not liable for any costs incurred by the offeror in preparation of the bid or proposal.

**34. CERTIFICATION REGARDING CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

**35. INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

**36. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**37. E-RATE COMPLIANCE:** Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, and in accordance with any State and local government E-rate related requirement(s) of the authorized procuring agency.

**38. CERTIFICATION REGARDING DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

**39. RECORDS ADMINISTRATION:** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

**40. AUDIT OF RECORDS:** The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**41. PRICES AS CEILING:** Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

**42. STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:** Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their intent to enter into a price agreement and, except where Attachment A or the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the contractor and the Lead State (on behalf of the WSCA Participating States) through execution of a Participating Addendum.

**Revision Date: April 2001**